CHAPTER XIII

DISTRICT COUNCIL AND STATE GOVERNMENT
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Although the District Council is the product of the Sixth Schedule to the constitution it is not outside the State Government. There are various means of control of the council by the State Government. Those means may be legislative, executive and administrative, financial, judicial and technical. The Sixth Schedule and the rules framed thereunder make sufficient scope for study of the control of the District Council by the State Government. Let us examine each of the means serially.

**Legislative Control**

The principal and formal means of control by the State Legislature over the local authorities are four:

1. by putting questions and eliciting answers. By this method, a member may not only elicit answers but also induce the Minister himself to undertake a particular course of action;
2. by means of adjournment motion a member may highlight the activities of a local authority;
3. the legislature may order an enquiry into the working of any local authority and
4. it may repeal or amend the existing legislation and thereby deprive the local authorities of some of their powers or it may fix the period during which certain powers may be
The last means of legislative control, however, is not applicable to the District Councils as it is not the creation of the State Legislature.

There were, however, some specific occasions when the Assam Legislative Assembly was discussing the District Council Affairs either in the form of putting questions to the Minister concerned; or by the members participating debate while a demand for grant is placed before the House, or a debate on the Governor's address. On 15th September, 1952 Bimala Kanta Bora put a question on the exclusion of Nomati Mauza from the administrative areas of the Karbi Anglong District Council as it was predominantly inhabited by the non-Karbis. The Chief Minister, Bishnu Ram Medhi made a detailed statement on the way the administrative areas of the council were determined and assured full protection of the non-Karbis living in that area of the autonomous district. On 20th September, 1952 Khor Sing Terang put a question on the jhum cultivation of the Karbis and the powers to be exercised by the council and the State Government in respect of the matter.


The Chief Minister Medhi made a clarification on the powers to be exercised by the council under the provisions of the Sixth Schedule. The Karbi Anglong District council again came up for discussion when Sai Sai Terang participated in the discussion on the budget of 1957-58. Terang while participating in the discussion mainly referred to the difficulties experienced by the council in respect of settlement of land with the Karbis due to the refugees and the immigrants. While moving a cut motion on the voting of demands for grants (Grant No. 79) Dulal Chandra Barua wanted clarification from the T.A.D. Minister as Barua alleged that huge amount of money had been earmarked for the development of the hill areas, which included Karbi Anglong too, had not been properly utilized. Barua considered defective framing of the budget the main reason of discontent amongst the hill people. There was another occasion when Barelong Terang while participating in the debate on the Governor's address blamed the District Council's land policy. According to Terang, though large number of encroachers were evicted by the council the land so evicted was not settled with landless poor cultivators. Those lands were settled with the family members of the council and the M.L.A's. Regarding forest, Terang blamed

the council for its wrong forest policy as a result of which valuable forest products had been leased out to the Birlas for their plywood factories. He appealed to the Assam Government to look into these anomalies and take proper action without delay.

While participating in the general discussion on the budget for 1978–79 Bilton G. Momin blamed the District Council for the failure of the composite schemes undertaken in different parts of the district. According to him lakhs of rupees were spent for the reclamation of land but no follow up action was taken up by the authority concerned to make the scheme a success.

Thus it is evident that the District Council became a subject of discussion in the Assam Assembly on a number of occasions. It is, however, important to note that this type of legislative control is not continuous but occasional and therefore not effective.

**Executive and Administrative control**

The really effective control over the District Council is exercised by the Executive of the State Government. It is the Governor who determines the administrative areas of a District Council. The administrative areas of the District

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8. Sub para 2 of para 1 of the Sixth Schedule.
Council of Karbi Anglong, as stated earlier, was determined by the Governor on the recommendations of a commission appointed for the purpose. Another most important power of the Governor is to appoint and terminate the nominated members of the council. As has already been stated that the term of the nominated members of the District Council were terminated on several occasions in order to keep the State Government's men in the council. It is interesting to note that on two occasions the nominated members became the CEM of the council.

Another most important power the Governor exercises is the power of extending the term of the council. On several occasions this power had been exercised by the Governor for political reasons. The Governor is the sole authority to declare a seat vacant in the event of resignation or removal of member or members by the council. No such occasion had arisen in respect of the council.

Another important aspect of administrative control of the council by the State Government is the Governor's right to appoint a commission to enquire into the administration of an autonomous district generally and in particular on

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9. This issue has been dealt with in detail in the chapter entitled "Constitutional Structure".

10. This issue has been dealt with in detail in the chapter entitled "Election of Members".
(a) the provisions of educational and medical facilities and communication in the district (b) the need for a new or special legislation for the district and (c) the administration of the laws, rules and regulations made by the council and define the procedure to be followed by such commission.  

Every such report shall be laid before the State Legislature with the recommendation of the Governor by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken by the Government. Thus it is seen that the Governor while exercising this power has to take the State Legislature into confidence. The Governor has not yet exercised this power in respect of the District Council.

The Governor has another most important power of suspending the resolutions of the council if in his opinion the same is likely to endanger the safety of India or likely to be prejudicial to public order. He may even suspend the council or assume to himself of all or any of the powers vested in or exercisable by the council so as to enable him to prevent the commission or continuance of such Act or the giving effect to such resolution. This also requires the approval of the State Legislature. No occasion had arisen in respect of the council.

11. Sub para 1 (a)(b)(c) of para 14 of the Sixth Schedule.
12. Sub para 2 of para 14 of the Sixth Schedule
13. Sub para (1)(2) of para 15 of the Sixth Schedule.
Another notable power is the power of supersession of the council by the Governor. If at any time the Governor is satisfied that a situation had arisen in which the administration of an autonomous district cannot be carried on in accordance with the provisions of the Sixth Schedule he may assume to himself all or any of the functions and declare that such functions shall be exercisable by such person or authority as he may specify for a period not exceeding six months. The Governor may by a further order or orders extend the initial order by a period not exceeding six months at a time. But every such order must be approved by the State Legislature concerned. This power of the Governor is just like the power exercised by the President under Article 356 of the Constitution.

These powers were exercised by the Governor for the first time in 1981. The circumstances that led to the supersession are interesting which need a very careful study. After a long spell of Presidential Rule in Assam the Congress(I) took oath of office. Bidya Sing Engleng, the CEM did not belong to Congress (I). Engleng still commanded majority support. But just on the eve of the December session of 1980 the

15. HAD.220/80/9 dated 2.1.81.
opposition mostly Congress (I) with the blessings of D.R. Rongpi, a Cabinet Minister in the State Cabinet, moved a no confidence motion against the E.C. of Engleng. When the motion was in the offing the Governor removed the two nominated members and appointed two other members who belonged to the Congress (I). The removal of the two members had brought the strength of the ruling and the opposition at 14:14. The two other nominated members belonging to Engleng group were already removed and no new members were appointed in their places. The Governor of Assam being convinced that the ruling and the opposition had equality of strength superseded the council. But now the question is how the strength had become equal. It was, in fact, the Governor's own creation by terminating the two members to reduce the strength of the ruling from 16 to 14. The question of superseding or dissolving the local body arises only "when it appears that it is not competent to perform its functions or has exceeded or abused any of the powers given to it or has wilfully disregarded any instructions issued by the State Government." 16 But in no case the act of supersession of the Governor could be justified on the above considerations for obvious reasons. The supersession, as a matter of fact, is not a democratic measure. It is not a

measure to promote healthy democracy. On the other hand, the frequent use of this punitive measure strikes at the root of the autonomy of the local authorities. V.G. Nandedhar rightly observed that supersession should be a legislative act and not an executive order. In the latter it is doubly worse. 17

Thus from the above it may be observed that the act of supersession resorted to by the State Government in respect of the District Council of Karbi Anglong was merely for partisan gains and the powers enshrined were blatantly violated by the State Government. Thus the views of the Administrative Reforms Commission that the Act of supersession or dissolution should be applied rarely and as a last resort after all means of advice and persuasion have been exhausted had been deliberately ignored by the State Government.

Still more important power of the Governor is the power to dissolve the council on the recommendation of a commission appointed under para 14 of the Sixth Schedule. Immediately after issuing the notification the Governor shall direct that a fresh election be held for the reconstitution of the council or he may assume the administration of the autonomous district himself or under the commission under para 14 or any other

authority considered suitable by him for a maximum period of twelve months. But every such step must require the previous approval of the State Legislature.  

This power was not exercised by the Governor in respect of the Karbi Anglong District Council.

Besides exercising these powers under the provisions of the Sixth Schedule and the rules made there under the Governor has some more powers which the State Government has over the councils. It is the Governor who can remove the disqualifications of a member who has failed to lodge a return of election expenses. The Governor, in fact, decides all questions relating to the disqualifications of the members. The Governor is the only authority to appoint all members of the E.C. except the CEM. The Governor shall appoint any member or members of the council to carry on the duties of the E.C. in the event of the resignation of the CEM till a new E.C. is constituted. The Governor shall also have the right to be informed of the election of the new CEM within 48 hours after the removal of the old E.C. by a vote of no confidence. If the council fails

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18. Sub para 1 of para 16 of the Sixth Schedule.
to elect within the stipulated period the Governor shall appoint any member of the council as the CEM of the council. Such a situation, however, did not arise in regard to the District Council.

This is to be noted that although the name of the Governor had been referred to on all occasions it is the State Council of Ministers and more specially the Minister for Hill Areas Department who decides all questions pertaining to the autonomous district with the prior approval of the Council of Ministers for obvious reasons.

Financial Control

The financial control is a kind of executive control imposed by the State Government over the District Council. The term 'financial control' relates to regulation of the finances, budgets, accounts and audit of the District Council. The District Budget for each autonomous district prepared by the State Government must be placed before the District Council for discussion. It has already been stated that the views of the council were not taken into consideration by the State Government almost on all occasions. Even the Assam Legislative Assembly criticised the way in which the budget was being prepared by the State

Thus the State Government deliberately ignored the views of the District Council of Karbi Anglong on all occasions.

The grants-in-aid is one of the most important instruments by which the State Government exercise control over the council. It has already been stated that the financial position of the council compelled to look to the State Government for help. The State Government in turn may put strings of financial control on the council. But as has already been stated that the State Government was indifferent to the use of Government grants. The loan is another instrument by which the State Government may exercise some control over the council. Some of the bans floated by the State Government were interest bearing loans and therefore the State Government had to remind the council for the payment of loans.

Audit is another instrument through which the local authorities may be controlled by the State Government. As has already been stated that audit has become less effective because most of the audit objections were not met by the council.

Thus it is evident that there is sufficient scope for the financial control of the council by the State Government.

24. (a) ALAD 1957 Vol.I No.6 P. 360.
    (b) ALAD 1957 Vol.I No.9 P. 596.
Judicial Control

Judicial control aims at keeping the local authorities within their own limits. The courts have the power to interpret the Act of the council when they are called upon to do so. Judicial control, in fact, affords remedies against the arbitrary and high-handed policies and actions of the local authorities. The judicial remedies available to the individual are of two kinds, ordinary and prerogative. Ordinary remedies are Declaration, Injunction and Damages while prerogative remedies are Certiorari and Mandamus. With all these remedies people may be protected from the high-handed policies of the local authorities. Although judicial control aims at projecting the liberty of the individual too much of interference by courts in its affairs are obstacles in the smooth functioning of the local authorities. The judicial control, however, has its own limitations. The courts cannot involve themselves in the affairs of the local authorities unless they are called upon to do so. Moreover, the judicial remedies available are not within the easy reach of common man. It is highly expensive and at the same time time consuming.

It is important to note that the judicial powers provided by the Sixth Schedule had not been exercised by the council. Therefore our study shall relate to some of the
High Court cases pertaining to the council of Karbi Anglong. These cases are mainly related to the departments of revenue and forests of the council. But it is most interesting to note that all cases are still pending after the issuance of the stay order given by the Gauhati High Court.

In the case of Khaizason Guite Vs. State of Assam and others, the D.F.O.(East) of Karbi Anglong Council served an eviction notice on the 'encroachers' of the Khonbamon Reserved Forest which had already been declared a reserved forest on 27th August, 1979. On being served the eviction notice the villagers filed a writ petition under Article 226 of the Constitution. The Gauhati High Court heard the petition and issued the stay order on 12.12.80 and the matter is still undecided.

In the case of Ngulkhojan Paite and others Vs. the State of Assam and others, the D.F.O.(East) issued an eviction notice on the 'encroachers' of the Longlit Reserved Forest on 26.2.81 which had already been declared as reserved forest in 1971.

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25. The Council office at Diphu could not make available the High Court cases of pre 1980 years. Therefore, our study will be very limited to a very small period.

26. The High court cases of nomination had been dealt with in the chapter entitled "Constitutional Structure".

27. Information collected during the month of November, 1983.

After the receipt of the eviction notice some of the alleged encroachers filed a writ petition under Article 226 on a number of grounds. The High Court heard the petition and issued stay order on 25.4.81 and the matter is still undecided.29

In the case of Samsing Engty Vs. the State of Assam an ejectment notice was served under rule 18(3) of the settlement Rules of the Assam Land Revenue Regulation on the petitions to vacate removing the structures and/or crops grown thereon within 15 days. The petitioner filed a petition under Article 226 of the Constitution on a number of grounds. The High Court after hearing the prayer issued stay order and ordered that the status quo be maintained without disturbing the petitioner.30

In the case of Karnabahadur Thapa Vs. Karbi Anglong District Council the High Court heard the petition and issued a stay order not to disturb the possession of land of the petitioner till finalization of the case. The matter is still undecided.31

In the case of Chandrabahadur Chetri Vs. Karbi Anglong District Council the petitioner challenged the Karbi Anglong District (Land Reforms) Act, 1979 and considered the

29. Civil Rule 419/81.
30. Civil Rule 893/81.
31. Civil Rule 545/81.
same illegal and unconstitutional. In the petition it was stated that unlike Parliament and the State Legislatures the District Councils are not clothed with plenary power to make laws being expressly limited by the provisions of the Sixth Schedule. The order of stay was issued and it has not yet been decided.\textsuperscript{32}

In the case of Chandra Bahadur Gurung Vs. Karbi Anglong District Council the petitioner stated that the impugned Act of 1979 was violative of the provisions of Articles 13, 14, 19 of the Constitution of India. It was further stated in the petition that legislation on land reforms should have been assented to by the President. The District Council could not exercise this power under the provisions of the Sixth Schedule the petition stated. The High Court heard the petition and issued stay order on 23.12.81 and the matter is yet to be decided.\textsuperscript{33}

In the case of Rambahadur Gurung Vs. Karbi Anglong District Council and others the petitioner challenged the validity of the Act of 1979 and the High Court issued a stay order which has not been decided.\textsuperscript{34}

In the case of Prahlad Das Vs. Karbi Anglong District Council the petitioner challenged the validity of the Act of 1979 as it had violated the fundamental rights guaranteed under

\textsuperscript{32} Civil Rule 945/81.
\textsuperscript{33} Civil Rule 1055/81.
\textsuperscript{34} Civil Rule 1051/81.
Article 19(1)(a) and 19(1)(g) and the right guaranteed under Article 300 of the Constitution. The High Court issued a stay order after hearing the petition and it is still pending in the High Court.35

These are not the only cases. There are others also. Thus the Gauhati High Court sought to control the Council.

Technical Control

The term technical control refers to the regulation and supervision of the various plans, programmes and projects formulated and implemented by the local authorities within their statutory functional jurisdiction. Therefore technical supervision by the Government is regarded as one of the means of State control. The necessity for technical control has been urgently felt in the case of the District Council as a large number of schemes previously undertaken by the State Government had been handed over to the District Council after the transfer of function in 1970.

Thus the District Council had been subject to various types of control by the State Government. What are our observations?

(1) The legislative control of the District Council of Karbi Anglong seemed to be minimum as it was not found to be very much effective. Most of the debates that took place in the Assam Legislative Assembly did not touch the council directly.

35. Civil Rule 312/82.
(2) The executive control of the council by the State Government was complete which was evidenced by the supersession of the council in 1961. It has become crystal clear that the State Government while superseding the council had some ulterior motives as a result of which the provisions of the Sixth Schedule were misinterpreted and misused by the State Government. The autonomy of the council had been damaged considerably which is not at all a healthy sign of relationship between the State Government and the District Council.

(3) On financial relations the position is not very encouraging. The State Government adopted an indifferent attitude when the council did not make use of Government grants for the purposes for which they were given. The District Budget which is prepared by the State Government should be prepared by the State Government in consultation with the council.

(4) The judicial control of the District Council by the Gauhati High Court was complete. The council had been prevented from exercising some important powers relating to land reforms as a result of the issuance of stay orders by the High Court on several occasions.